

# საქართველოს ახალგაზრდა იურისტთა ასოციაცია GEORGIAN YOUNG LAWYERS' ASSOCIATION



## GYLA'S Statement regarding the 5th anniversary of Anti-discrimination Law Adoption

On 2 May 2014, the Parliament of Georgia adopted the **Law "On Elimination of All Forms of Discrimination."**

Discrimination related proceedings were a priority in GYLA's strategic litigations **for the last five-year period** since the adoption of the law. During the period, **GYLA filed more than 30 cases with the common courts and the Public Defender of Georgia.**

GYLA has conducted the cases related to discrimination based on sex, age, disability, religion, ethnic origin, citizenship, political or trade union membership and other characteristics within five years after the enactment of the law.

In 2018 as well as in the previous years, the court and the Public Defender found discrimination in a number of cases litigated by GYLA.

- **One of the cases** where the City Court established discrimination in 2018 was related to dismissal of a 56-year-old woman from the position of a cleaner. The Court found that the respondent could not confirm the fact of the applicant's absence from work due to health issues and other reasons, and performance of the labor obligations of the applicant by other cleaners or employees, that the employer indicated as the grounds for the termination of the employment agreement. Moreover, the respondent could not present the grounds confirming the incompatibility of the applicant's qualifications and skills to the position, as she had worked for the company since 2013, during which time no disciplinary penalty had been ever issued against the applicant. In addition, the Court explained that the applicant, within the burden of proof imposed on her, confirmed that she had been dismissed without any legitimate grounds due to the employer's desire to hire a younger employee for her position. Consequently, the Court held that the applicant was subjected to an unequal treatment - **direct discrimination, which was expressed in the termination of her employment contract because of her age.**

- Last year, **based on the GYLA's statement, the Public Defender of Georgia found discrimination in the regulation adopted by Tbilisi City Hall, according to which only people with serious disabilities were granted the right to use special parking places.** The Public Defender considered that, taking into consideration the social model of disability, a particular person's needs, including the issue of using special car parking, should be resolved based on individual assessment of the person rather than on medical diagnosis.

- **Another case** managed by GYLA, based on which the Public Defender found discrimination on the ground of disability in 2018, **was related to the possibility of access for blind persons to an official document.** The applicant, who is blind, received social assistance. After another routine assessment of the socio-economic situation of his family, the authorized person, in order to double check, read out for the applicant the information indicated in the declaration, after which the applicant

affixed his signature to the document. Later, the applicant discovered an inaccuracy in the declaration due to which his family was deprived of the social allowance. On the basis of his application, the Public Defender established an indirect discrimination as it was found that in the absence of the Braille or other alternative means, any blind or visually impaired individual is deprived of the possibility to check substantially important information regarding the family's social-economic status provided in the declaration. In the given case, the applicant was treated equally to those who do not have vision problems. Thus, the applicant was placed in an essentially unequal situation compared to those with no special needs.

- **Another successful case** litigated by GYLA **concerned the sexual harassment against a woman**, which occurred when the applicant and her employer met to discuss work-related plans. The application is one of the three, on the basis of which the Public Defender applied the reasonable women's standard of burden of proof and the presumption in sexual harassment cases that the abuser ought to have known about the undesirability of the action for the victim. Considering the existing factual circumstances, the Public Defender established sexual harassment.

In parallel to the litigations, **GYLA actively advocated for the improvement of the discrimination legislation**. In February 2019, the law was amended to envisage harassment and sexual harassment as a form of discrimination. However, refusal to a reasonable adjustment, as a form of discrimination against persons with disabilities, has not yet been recognized by the Georgian legislation.

**GYLA also deems essential to strengthen the effectiveness of the mechanisms available for restoring violated rights**. In this regard, it is important to reinforce the mandate of the Public Defender of Georgia with respect to private individuals, which envisages development and enforcement of a mechanism for obligating physical and legal entities to report to the Public Defender. Also, it is important to increase the three-month application term for victims to enable them to use the judicial system more efficiently.

Unfortunately, only the regulation of the normative framework is not sufficient to achieve equality goals. **As the cases litigated by the GYLA show, the key factor promoting discrimination is often low sensitivity and neglect of the interests and needs of vulnerable groups**. The reason for limiting the basic human rights and freedoms is often related to false stereotypes rooted in the society over the

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years. On the other hand, the State fails to properly understand the importance of providing the guarantees of equality and policies tailored to the interests of vulnerable groups, which hinders the integration of persons of any sign into the society.

GYLA will further continue to conduct discrimination related litigations before the courts and the Public Defender and will promote the improvement of the legislative base and policies in this respect.